

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition for Rulemaking to Eliminate the	)	MB Docket No. 12-3
Sports Blackout Rule	)	
	)	
	)	

**COMMENT TO RULEMAKING**

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## **I. Introduction**

The FCC should repeal rules that are outdated and unnecessary, such as the Sports Blackout Rule. The FCC's Biennial Review statute provides, "In every even numbered year, the commission... shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." <sup>[1]</sup> As this comment will show, the FCC's Sports Blackout Rule <sup>[2]</sup> no longer serves the public interest on which the original rule is premised, and repeal of the rule would eliminate a regulatory backstop which actively prevents meaningful economic competition in a market where private parties are fully competent to negotiate their own contracts.

## **II. The FCC should cease to prop up a rule whose need has been eliminated by shifting economic forces.**

The original Blackout Rule was premised on preserving the National Football League's economic viability. <sup>[3]</sup> The Blackout Rule was Congress's response to a federal district court's rulings in two cases that would have subjected the NFL's pooling of broadcast rights to antitrust law, effectively preventing the NFL from making package sales to broadcasters. <sup>[3]</sup> In recommending the legislation that would overturn the district court's ruling, the Antitrust Subcommittee of the Senate Committee on the Judiciary noted that inaction would create a "danger that the structure of the league would become impaired and its continued operation imperiled." <sup>[4]</sup> The Committee thought that this danger could be averted by allowing the NFL to make package sales. Thus, Congress endeavored to maintain the NFL's economic viability by granting them a narrow anti-trust exemption.

The League's economic viability is no longer in danger. The NFL has experienced a period of unprecedented growth during the past twenty years. <sup>[5]</sup> The NFL had revenue of about \$9 billion in 2010. <sup>[1]</sup> TV contracts have replaced ticket revenue as the primary driver of the

NFL's revenue, yet the NFL continues to impose draconian black out rules when its stadiums fail to sell out.<sup>[5]</sup> The NFL uses the blackout rule to force cable and satellite broadcasters to abide by the same contractual blackout terms that the local broadcasters do. The \$3.8 billion in TV revenue compared to \$1.5 billion in ticket revenue shows the NFL no longer has a pressing need for a government-backed black out rule.<sup>[5]</sup> If the NFL feels that it must have games blacked out, then the cable and satellite providers should be free to negotiate blackout terms in their contracts with the NFL.

### **III. The example of NCAA football demonstrates that the league will be competent to negotiate its private contracts without the FCC's regulatory backstop.**

During this same period collegiate football has experienced a boom in popularity and revenue. Universities' athletic department budgets and coaches' salaries are growing as college football brings in more and more revenue from lucrative television contracts.<sup>[6]</sup> The top 68 teams in college football in America generated over \$1 billion in profit for the first time.<sup>[7]</sup> College football has grown explosively without the aid of an anti-trust exemption that allows all NCAA teams to negotiate as a collective entity.<sup>[8]</sup> Universities and conferences are free to negotiate black out provisions in their individual contracts with networks if they believe it serves their own best interest. But this power is left to contract negotiations and not provided for by the federal government. Universities appear to have decided that allowing its fans to watch games even if the game has not sold out, is in its own best interest and the best interest of the fans.

### **IV. The Blackout Rule is denying consumers access to a product for which they have already paid.**

The NFL believes that allowing satellite and cable broadcasters to negotiate black out terms will give those broadcasters too much power. The satellite and cable broadcasters want to carry these games because their customers (who are also the NFL's customers) want to watch

these games. A consumer pays for cable or satellite and a portion of that payment filters to the NFL through the NFL's TV contracts. Consumers who live near the stadiums pay an additional cost for the privilege of having an NFL franchise nearby in the form of tax subsidies. That same consumer is then blacked out by the NFL and is unable to watch a game they have already paid to see. The consumer shouldn't be forced to also go buy a ticket and go to the game just because the game failed to sell out when the NFL's viability no longer relies on their attendance for survival. The FCC's Sports Blackout Rule therefore perpetuates a double whammy of injustice wrought on paying consumers, and should be repealed.

## **V. Conclusion**

The NFL should not be able to use an FCC rule to blackout cable and satellite providers. They should have to negotiate separate blackout contracts with those providers. By allowing for the blackout terms to be negotiated, the true value of these blackout rules will be determined and the consumer will benefit. Rising ticket prices coupled with the tremendous amount of revenue generated for the NFL from TV contracts have made blackouts prohibitively anti-consumer. College football has thrived without the provisions the NFL so desperately seeks to protect. Thus, the blackout rule does not benefit consumers in any way. The FCC should repeal its Sports Blackout Rule.

Respectfully Submitted,

By:       /s/      .

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1. 47 U.S.C. § 161(a)
  2. 47 C.F.R. § 76.111
  3. David L. Anderson, The Sports Broadcasting Act: Calling it what it is – Special Interest Legislation, Hastings Communications and Entertainment Law Journal, Summer 1995 at pg. 957
  4. Senate Report No. 87-1087
  5. <http://online.wsj.com/article/SB10001424052748703373404576148712424300234.html>
  6. [http://www.usatoday.com/sports/college/2011-06-15-athletic-departments-increase-money\\_n.htm](http://www.usatoday.com/sports/college/2011-06-15-athletic-departments-increase-money_n.htm)
  7. [http://money.cnn.com/2010/12/29/news/companies/college\\_football\\_dollars/index.htm](http://money.cnn.com/2010/12/29/news/companies/college_football_dollars/index.htm)
  8. ***NCAA v. Board of Regents of the University of Oklahoma***, 468 U.S. 85 (1984) (In *NCAA v. Board of Regents of the University of Oklahoma*, the Supreme Court declared the NCAA's negotiation of TV contracts for all of college football to be a violation of the Sherman Act.)